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In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. 832

LOUIS CAPUTO, as President, or MARTIN RARBACK, as Secretary-Treasurer of District Council 9 of New York City, Brotherhood of Painters, Decorators and Paperhangers of America, and ISADORE WEBMAN, individually and as President, or SAM GOLDSTEIN, as Treasurer of Local Union 442, Brotherhood of Painters, Decorators and Paperhangers of America, *Petitioners,*

v.

SOLOMON SALZHANDLER, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on April 18, 1963.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 52 LRRM 2908, 316 F2d 445, and is attached hereto, together with the judgment and the order denying the petition for rehearing, as Appendix "A"

(R. 3-15, 16, 53).[1] The opinion, findings of fact and conclusions of law, and order of the United States District Court for the Southern District of New York are unreported and are attached hereto as Appendix "B" (R. 93b-100b).

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1963, and a Petition for Rehearing was denied May 29, 1963, making such judgment final.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Does Title I of the Landrum-Griffin Act prevent unions from enforcing rules, customary throughout the labor movement, making it a disciplinary offense for a union member to slander or libel a union officer?

STATUTES INVOLVED

Title I of the Landrum-Griffin Act, 29 U.S.C. Section 401, et seq.:

> Sec. 101. (a)(1) Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
>
> Sec. 101. (a)(2) Freedom of Speech and Assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members;

[1] The Record before this Court is divided into three Volumes. Volume I contains pages 1a-71a, Volume II contains pages 1b-100b and Volume III is paginated 1-76. Accordingly, the designation of the Record by page number only will identify the Volume in which it appears.

and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

STATEMENT

A. The Facts

Petitioners are officers of District Council 9 and Local Union 442, both labor organizations affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America (hereinafter called the Brotherhood), a national labor organization affiliated with the AFL-CIO (R. 36b-37b; 18a-19a). Respondent is a member and former financial secretary of Local 442 (R. 7b-8b; 19a).

In April of 1961 District Council 9, following charges, notice and trial (R. 4b, 26b, 48b-51b, 57b-60b, 88b-92b), found respondent Salzhandler guilty of libeling and slandering the president of Local 442, one Webman, in violation of Section 267 (10) of the Brotherhood's constitution (R. 5b, 68b, 88b-92b).[2] The libel and slander consisted of accusing Webman of conversion of union funds through improper convention expenses and of being "a petty robber" in connection with the refund of two small checks to the widows of

[2] Section 267 (10) of the Brotherhood's Constitution makes the following a disciplinary offense: "(10) Libeling, slandering, or in any other manner abusing fellow members, officers of local unions or other subordinate bodies, or of the General Executive Board or the General Officers of the Brotherhood. (R.91b; 28a).

members for alleged overpayment of dues. These charges were made orally at union meetings and also by means of a leaflet containing these charges distributed to the general membership of the local. (R. 1b, 22b-25b, 45b).

The penalty decreed by the trial body was in substance removal from office as financial secretary and suspension from active participation in union affairs for a period of five years. (R. 5b, 88b-92b).

B. The Proceedings Below

On June 14, 1961, following exhaustion of his remedies within the union, Salzhandler brought an action under Title I of the Labor Management Reporting and Disclosure Act in the United States District Court for the Southern District of New York, requesting nullification of the order of the trial board, reinstatement to his position as financial secretary, and damages (R. 8a). Plaintiff in substance alleged that his right of free speech protected by Section 101 of that Act had been denied by the disciplinary action in question (R. 21a-22a).

Following trial, District Judge Wham dismissed the complaint, holding that the proceedings before the trial board and the trial board's decision were warranted under the evidence and independently finding that the statements contained in the leaflets were in fact and in law libelous (R. 93b-100b). He concluded that: "The rights accorded members of labor unions under Title I of the Labor Management Reporting and Disclosure Act of 1959 *** do not include the right of a union member to libel or slander officers of the union." (R. 99b-100b).

Salzhandler then brought an appeal in the Court of Appeals for the Second Circuit. That court reversed, holding that Title I "was designed to protect the rights of union members to discuss freely and criticize the management

of their unions and the conduct of their officers." (R. 10). The court found that the language of Title I together with its legislative history indicated an intention of Congress to protect the right of free speech of union members to a greater degree than such right is protected under the federal Constitution, so that any member may make false and libelous statements free from union discipline, the exceptions contained in Title I to the protections of the exercise of Title I rights not including such discipline for libel or slander. The court concluded with the following:

> "So far as union discipline is concerned Salzhandler had a right to speak his mind and spread his opinions regarding the union officers, regardless of whether his statements were true or false. It was wholly immaterial to Salzhandler's cause of action under the LMRDA whether he spoke truthfully or not, and accordingly Judge Wham's views on whether Salzhandler's statements were true are beside the point. Here Salzhandler's charges against Webman related to the handling of union funds; they concerned the way the union was managed. The Congress has decided that it is in the public interest that unions be democratically governed and toward that end that discussion should be free and untrammeled and that reprisals within the union for the expression of views should be prohibited. It follows that although libelous statements may be made the basis of civil suit between those concerned, the union may not subject a member to any disciplinary action on a finding by its governing board that such statements are libelous." (R. 15).

Petitioners herein filed a petition for rehearing with the court (R. 29), which was denied on May 29, 1963 (R. 53).

REASONS FOR GRANTING THE WRIT

I

The court below has decided an important question of federal law which has not been but should be settled by this

Court.[5] Section 101 (a) (2) of Title I of the Landrum-Griffin Act (Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. §401, et seq.)) protecting the union member in his right of free speech within the union has been interpreted in a manner contrary to that authorized by the language of the statute and contrary to that intended by Congress. Customary and valid provisions of union constitutions making the libel or slander of union officers by union members grounds for disciplinary action have here been declared unenforceable as an intrusion upon the right of criticism safeguarded by that section. Such union constitutional provisions have been held by the court below not to be within the exceptions to the free speech protections set forth in the proviso to Section 101 (a) (2) which state that unions have a right to adopt reasonable rules "as to the responsibility of every member toward the organization as a institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligation." Thus, no matter how false the libel or deep the calumny or widespread the publication, unions are forbidden to fine, suspend, expel or otherwise discipline members who have held their union officers to public shame and ridicule.

Few decisions of a federal appellate court have so shocked the labor movement. It is no happenstance that almost every union constitution contains a provision which makes the libel or slander of a union officer an offense.[6] Experience has demonstrated that such provisions are

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[5] That the court below itself found the issue to be of great importance is evidenced by the opening statement of its opinion:—"This appeal raises an important question of the rights of union members under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§401-531."

[6] At petitioners' request, the research department of the AFL-CIO has made a study of the Constitutions of international unions affiliated with that body. Out of 152 constitutions studied 125 have a provision which either expressly or by necessary implication makes it an offense for a

necessary in order to protect union officials from the reckless, the unscrupulous, the professional union disruptors and those who by destroying the character of union officers would turn the labor movement to their own ends. The ability of unions everywhere to hold orderly meetings, to protect their officers from the reckless or the malfactor, and to carry on its business through its duly elected officers, will have been seriously impaired. It seems incredible that Congress could have intended Landrum-Griffin's "Bill of Rights" to prohibit unions from disciplining members who falsely and without basis publicly blacken the name and reputation of those whom the union members have elected to serve them.

Nor is it credible that Congress could have intended, as held by the court below, that the union officers so libeled or slandered are relegated to a civil suit for damages. Congress could not have been unaware that such a remedy is a completely inadequate one either in terms of protecting the individual or in protecting the union assuming either has the means of financing such litigation. On the other hand the union member is fully protected against improperly founded or tried disciplinary proceedings against him because Title I permits court review of both the trial proceedings and the merits of any charge of defamation. Delays in obtaining judicial remedy compel the conclusion that the practicalities of day to day union operation require more immediate and effective remedies against abuses which, if unchecked, could wreck any union.

II

On its face subsection 101(a)(2) gives no license to libel. It merely gives the right to union members "to express any views, arguments or opinions," or, at union meetings, their

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union member to libel, slander or otherwise defame a union officer, and all but three have general provisions which could be used to punish for libel.

views upon candidates for union office or their views on union business. Even standing alone this language would not seem to warrant a construction which would permit the expression of false statements of fact, since "views, arguments and opinions" are something quite different from accusations of criminal wrongdoing. And in any event this grant of free expression is immediately qualified in two respects, one ignored and the other misinterpreted by the court below. First, the expression of views is made "subject to the organization's established and reasonable rules pertaining to the conduct of meetings." Second, as indicated above, the subsection is made subject to the further proviso that "nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

III

The "subject to" clause was completely overlooked by the court below, its opinion having been addressed solely to "the inclusion of only two exceptions" in the proviso which follows (R. 13), despite the fact that the libel and slander which was the subject of union discipline occurred, in part, during the course of union meetings (R. 16-226-256, 456). This broad exception of "reasonableness" is obviously devoid of the language limitation of the proviso which appeared to constrain the court below to hold as it did. And regardless of whether the decision of the court below is justified by the language of Section 101(a) (2) which precedes the proviso, it would seem clear that that court erred in denying petitioner's contention, pressed particularly on application for rehearing, that the union rule making slander or libel of unions officers a disciplinary offense is within

the language of the proviso, both as a means of insuring membership responsibility towards the union as an institution and assuring union performance of its obligations. A union, like any organization, can and does function as an institution only through its elected spokesmen—who are its officers. A union's ability to function effectively on behalf of its members depends in large part upon the confidence and respect that the membership, that the employers with whom the union must deal, and that the general public have and maintain in respect to those officers. If the responsibility of a member towards his union does not include a responsibility to refrain from falsely holding up the union officers to public contempt, it is difficult to imagine what that responsibility would include. Similarly, to put the union officers in positions of public infamy necessarily interferes with the union's ability to perform its legal and contractual obligations one of which is to represent all of the employees in a bargaining unit fairly, impartially and adequately, *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953); *Miranda Fuel Co., Inc. (Local 553, Teamsters)*, 140 NLRB No. 7, 51 LRRM 1584, and another of which is to obtain adherence to the terms of collective bargaining agreements. Publicly discredited officers can hardly be effective in carrying out these obligations.

IV

There is no need to rely on the proviso alone, however. Not only the plain language of Section 101 (a) (2) which precedes the proviso but also the legislative history of the section indicates that the rights of free speech are not untrammeled and give no license to libel. That history discloses that all the legislators who participated in the debates and discussions preceding and following the passage of the section professed the belief that there were necessary and inherent limitations on the exercise of the rights guaranteed by the "Bill of Rights." Thus, the original version of Sec-

tion 101 sponsored by Senator McClellan was absolute in form, that is, contained no proviso or "subject to" clause, and in addition expressly stated that the exercise of these rights were to be honored "without being subject to penalty, discipline, or interference of any kind by such organization." (105 Cong. Record Volume 5, Page 6475.) But even in respect to this unqualified grant of free speech and assembly, Senator McClellan made it clear that he regarded the exercise of these rights to be subject to the same limitations as is the exercise of rights under the First Amendment; indeed, the very name which was made applicable to this section—"The Bill of Rights"— was taken from the analogy to the Bill of Rights under the Federal Constitution. See Legislative History of the Labor Management Reporting and Disclosure Act of 1959, Vol. II, pages 1103(1), 1104(3), and 1105(1).[5] He stated in this respect as follows:

> "AFL-CIO contends that section 101(a)(1) *and* (2), which provide equal rights and privileges and free speech and assembly, are too broad. They observe, however, that 'unions are obviously entitled to make reasonable rules and regulations with respect to the rights of members relating to the conduct of business at union meetings.'
>
> The answer: This limitation, that the unions might make reasonable rules *relating to* equal rights and *free speech* and assembly, *was implicit in the bill of rights* as originally drafted, just as it is implicit in the Bill of Rights of the Federal Constitution to prevent abuse. Moreover, this limitation was added explicitly in the compromise draft, which made *these rights subject to reasonable rules and regulations.* The precise application of this limitation may require court determination on some specific borderline instances, but this is hardly a sound argument for deleting a guarantee of such basic rights. If it were, the Bill of Rights of the

[5] The reference to the legislative history is to the second volume compilation published by the National Labor Relations Board. The number in the parentheses following the reference to the page number refers to the column on that page in which the quote appears.

United States Constitution would be subject to the condemnation for the same reason." Leg. Hist. Vol. II, 1294(3). (Emphasis supplied.)

This Court's decision in *Beauharnais v. Illinois*, 343 U.S. 250, 266 (1952) had at the time of these remarks firmly established the principle that the First Amendment to the federal Constitution does not give license to libel or slander.

The Senate was not satisfied with the unqualified language of Senator McClellan's original proposal. Senators Kuchel and Javits offered and the Senate adopted qualifying amendments, that is, the "subject to" clause and the proviso above referred to. In explaining his amendments, Senator Kuchel made specific reference to his intention to incorporate reasonable protections against libel and slander. Thus, he stated: "The language in the amendment of the able Senator from Arkansas***was too broad, and that there are in this land of ours, for example, reasonable laws governing *libel and slander. The rule of reason is what we ought to apply.* By the language of our amendment***we attempt to provide for the rule of *reason with reasonable restraints on the right of free speech.*" Leg. Hist., Vol. II, 1231(3), (emphasis supplied). Senator Javits had the following to say concerning his concept of the language of the Kuchel Amendment:

Mr. Javits: "Mr. President, I say to those who talk about free speech that under the Constitution of the United States free speech is not license. Supreme Court Justice Holmes laid down the proposition long ago that it might be free speech to get up in a movie theater and to yell 'Fire', but that we could prevent it by law. What would our colleagues do? Would your colleagues have us allow a union member to get up at a union meeting and yell 'Fire'? Would our colleague say that is free speech?—because that is what we are asked to write into this bill. That is nonsense, and we know it. Of course, all freedom has to be subject to proper and reasonable rules of procedure." (Leg. Hist., Vol. II, 1238 (1)(2)).

Even the opposition expressed agreement with the general principle that the right of free speech given in the Bill is subject to reasonable restrictions as for instance in respect to protection against libel and slander. (Cong. Rec. Vol. 105, Part 15, p. 19758; see also Leg. Hist. Vol. II, 1273 (2) (3); Leg. Hist. Vol. II, 1235 (2).

The Court below construed a colloquy between Senators Goldwater and Clark in the legislative history as meaning that Congress did not intend to permit a trial *de novo* in the courts of the issue of whether a libel which gave rise to union discipline was in fact and in law an actionable libel. A reading of that entire colloquy, however, makes it very clear that it had reference not to the Kuchel amendment which became law but to an amendment proposed by Senator Goldwater which was not adopted. Leg. Hist. Vol. II, page 1235. The latter amendment would have granted to union members an absolute right to free speech "unless there has been a final determination by the courts . . . that such utterance constituted an actionable or criminal defamation of such organization, or any of its officers, agents, representatives or members." Leg. Hist. Vol. II, 1235 (2). Thus, both the Kuchel amendment and the Goldwater amendment contemplated a court test of the reasonableness of the rule enforced by the union. The conversation between Senators Goldwater and Clark related solely to the question of burden of proof. While the Kuchel amendment would require the allegedly aggrieved union member to prove in court that the union's rule which was applied to discipline him was unreasonable, the Goldwater amendment would have established a presumption that said rule was unreasonable and required the union to prove otherwise. If anything, the Goldwater amendment and the colloquy relied upon by the court below demonstrated that even those who opposed the liberal provisos to the right of free speech conceded that "defamation" was to be an exception to the rights granted regardless of whether such defamation were directed at the organization or its officers and agents.

To permit the court to review both the propriety of the disciplinary proceedings involving the charge of libel and the question of whether a libel had in fact and in law been committed would seem to give both the disciplined union members and the libeled union officer all the protection necessary. There is nothing in the legislative history to show any intent on the part of any congressman to deny the union or its officers reasonable internal protections against libel or to give the union member full freedom to commit libel as concluded by the court below. Neither free criticism, the right of discussion or the right to express views requires the right to publicly blacken names and reputations. This Court has made this clear in *Beauharnais, supra*, when it said:

> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene the profane, the libelous, and the insulting or 'fighting' words—those by which their very utterance inflict injury or tend to incite to an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument'."

V

It is respectfully submitted that the instant case does involve an important question of the interpretation and the application of the protections which the Landrum-Griffiin Act has given to the free speech of union members—a question which has not been decided by this Court, but merits its

attention.[6] The impact of the decision below, if left to stand, upon the daily operation of labor unions and their ability to function and maintain a degree of internal discipline, will have been greatly impaired—clearly, we believe, in a manner at no time intended by Congress or even any single member of Congress. Indeed, the permission to libel and slander given by the decision, if read into the statute as it must, raises a serious question as to the congressional power under the interstate commerce clause to enact and enforce the bill of rights as interpreted. For while it is arguable that the end sought by the legislation—union democracy—is reasonably related to interstate commerce, no reasonable relation could be shown, in turn, between union democracy and the rights of individuals to defame union officers. For the same reason the bill of rights, as interpreted by the court below, would constitute an arbitrary enactment which could not pass the test of due process as contained in the Fifth Amendment.

[6] The broad implications of the decision have already been felt. A recent opinion of a federal district court judge in Minnesota holds that slander may not be made the subject of union discipline, in express reliance on the decision of the court below. *Stark* v. *Twin City Carpenters*, 53 LRRM 2640 (D. Minn. 1963).

CONCLUSION

It is respectfully requested that, for the reasons asserted above, this Petition for a Writ of Certiorari be granted.

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 138—October Term, 1962
(Argued November 28, 1962 Decided April 18, 1963)
Docket No. 27756

SOLOMON SALZHANDLER,

Plaintiff-Appellant,

v.

LOUIS CAPUTO, as President, or MARTIN RABBACK, as Secretary-Treasurer of District Council 9 of New York City, Brotherhood of Painters, Decorators and Paperhangers of America, ISADORE WEBMAN, individually and as President, or SAM GOLDSTEIN, as Treasurer of Local Union 442, Brotherhood of Painters, Decorators & Paperhangers of America,

Defendants-Appellees.

Before:

LUMBARD, *Chief Judge*,
CLARK and KAUFMAN, *Circuit Judges*.

Appeal from judgment of the United States District Court for the Southern District of New York, Fred L. Wham, J., dismissing a complaint brought under the Labor Management Reporting and Disclosure Act of 1959, §102, 29 U. S. C. §412, which alleged an abridgement of plaintiff's freedom of speech as protected by §101 (a) (2) of the above Act, 29 U. S. C. §411 (a) (2). We reverse and remand.

BURTON H. HALL, New York, N. Y., *for plaintiff-appellant.*

HAROLD DUBLIRER, New York N. Y. (Michael A. Buoncra, New York, N. Y., on the brief) *for defendants-appellees.*

LUMBARD, *Chief Judge:*

This appeal raises an important question of the rights of union members under the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. §§401-531; whether a union member's allegedly libelous statements regarding the handling of union funds by union officers justify disciplinary action against the member and his exclusion from any participation in the affairs of the union for five years, including speaking and voting at meetings and even attending meetings. We hold that the LMRDA protects the union member in the exercise of his right to make such charges without reprisal by the union; that any provisions of the union constitution which make such criticism, whether libelous or not, subject to union discipline are unenforceable; and that the Act allows redress for such unlawful treatment. Accordingly we reverse the judgment rendered by Judge Wham, sitting in the United States District Court for the Southern District of New York, which dismissed the union member's complaint and we remand the case for further proceedings.

Solomon Salzhandler, a member of Local 442, Brotherhood of Painters, Decorators & Paperhangers of America, brought suit in the district court following the decision of a Trial Board of the union's New York District Council No. 9 that he had untruthfully accused Isadore Webman, the president of the local, of the crime of larceny. The Trial Board found that Salzhandler's "unsupported accusations" violated the union's constitution which prohibited "conduct unbecoming a member ***", "acts

detrimental to *** interests of the Brotherhood", "libeling, slandering *** fellow members [or] officers of local unions" and "acts and conduct *** inconsistent with the duties, obligations and fealty of a member."[1]

Salzhandler's complaint alleged that his charges against Webman were an exercise of his rights as a member of the union and that the action of the Trial Board was in violation of the provisions of the LMRDA under which he was entitled to relief.

The undisputed facts developed during the trial in the district court amply support Salzhandler's claims for relief.

Salzhandler was elected financial secretary of Local 442 in 1953. He was reelected thereafter and at the times in question he was serving a three-year term which was to end June 30, 1962. His weekly compensation as an officer was $35, of which $25 was salary and $10 was for expenses. The dispute giving rise to this suit was touched off in November 1960 by Salzhandler's distribution to members of Local 442 of a leaflet which accused Webman of mishandling of union funds.

Prior to the audit each July, Salzhandler obtained the checks for the auditor. In going over the union's checks in July 1960 Salzhandler noticed that two checks, one for $800 and one for $375, had been drawn to cover the expenses of Webman and one Max Schneider at two union conventions to which they were elected delegates. The $800 check, drawn on August 21, 1959 to Webman's order, was endorsed by Webman and his wife. The $375 check drawn on March 4, 1960 to "Cash" was likewise endorsed by Webman and his wife. Schneider's endorsement did not appear on either check. Schneider had died on May 31, 1960.

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[1] Brotherhood Constitution §267(5), (6), (10) and (16).

On July 15, 1960 two checks, each for $6, were drawn as refunds of dues paid by Max Schneider and another deceased member. Such checks were ordinarily mailed to the widows. Webman, however, brought the two checks to Salzhandler and told him to deposit them in a special fund for the benefit of the son of Max Schneider. Salzhandler refused to do this because the checks were not endorsed. Thereafter Sol Feldman and W. Shirpin, who were trustees of the local, each endorsed one of the checks and Salzhandler made the deposit as Webman had requested.[2]

In November 1960 Salzhandler distributed to members of the local a leaflet which accused Webman of improper conduct with regard to union funds and of referring to members of the union by such names as "thieves, scabs, robbers, scabby bosses, bums, pimps, f-bums, [and] jail birds".[3] Attached to the leaflet were photostats of the four checks. With regard to the convention checks, Salzhandler wrote:

> "The last convention lasted five days, Monday August 31, to Friday, September 4, 1959. The delegates of 442 presented their credentials Monday, August 31, and on Thursday, September 3, as soon as they got the mileage fare, they disappeared. They were absent at Thursday afternoon session. The most the chairman should have gotten was a weeks pay and allowance—$250.00. The auditor's report shows he got $200 in pay and $300 in expenses—$500, or twice what was coming to him, and also $300 as expenses for the Business

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[2] At the trial Webman testified that he had authorization from the widows.

[3] Salzhandler claims that he reported these purported irregularities to the local's membership at a meeting in August 1960. He further asserts that he filed formal charges against Webman at about the same time. The defendants denied that Salzhandler had taken these actions. Judge Wham made no findings on these disputed facts.

Agent. The check was made out to *Cash* for $800 (photostat enclosed). So was the voucher. It does not indicate that Max Schneider got any of it. The same goes for a check made out *only* to I. Webman on March 4, 1960 for another convention, where the chairman was to get $250, but got $375. It does not indicate Schneider got his share. Were the checks legal?"

The leaflet also branded Webman as a "petty robber" of the two $6 checks:

> "To prove himself most unworthy of any trust, he performed the cheapest petty act ever. Two widows were refunded each $6.00 for overpayment of dues. Two checks were issued to that effect. The petty robber had two of his friends sign their names and the chairman declared these two checks as contributions to the special tax for Michael Schneider—photostats of checks enclosed."

On December 13, 1960 Webman filed charges against Salzhandler with the New York District Council No. 9 of the union, alleging that Salzhandler had violated the union constitution, §267, by libelling and slandering him in implying that he, Webman, had not reimbursed Max Schneider for convention expenses, and that he had been a "petty robber" in causing the two $6 checks to be deposited in the Michael Schneider fund, rather than being paid over to the two widows. The charge went on to state that Salzhandler was guilty of "acts and conduct inconsistent with the duties, obligations and fealty of a member or officer of the Brotherhood" and that the net effect of the leaflet was untruthfully to accuse an officer of the union of the crime of larceny. For over six hours on the evening of February 23, 1961, Salzhandler was tried by a five-member Trial Board of the District Council. As the union rules permitted, Salzhandler was represented by a union member who was not a lawyer. At the trial, Webman introduced the leaflet. Salzhandler produced the photostats and was questioned by the Trial Board. Webman's witnesses testified that the convention expenditures were approved by the membership. Salz

handler, produced three witnesses who testified that Webman had called members names as alleged in the leaflet.

Not until April 2, 1961 did Salzhandler receive notice of the Trial Board's decision and his removal from office and this was from a printed postal card mailed to all members:

> "By a decision of the Trial Committee of District Council 9, Sol Salzhandler [sic] is no longer Financial Secretary of Local Union 442."

Thereafter, on April 4, the District Council mailed to Salzhandler only the final paragraph of its five page "Decision" which read as follows:

> "It is our decision that Brother Solomon Salzhandler be prohibited from participating in the affairs of L.U. 442, or of any other Local Union of the Brotherhood, or of District Council 9, for a period of five (5) years. He shall not be permitted during that period to attend meetings of L.U. 442, to vote on any matter, to have the floor at any meeting of any other Local Union affiliated with the District Council, or to be a candidate for any position in any local Union or in the District Council. In all other respects, Brother Salzhandler's rights and obligations as a member of the Brotherhood shall be continued."

Salzhandler did not receive a copy of the full opinion of the Trial Board until after this action was commenced on June 14, 1961. Meanwhile, as the union constitution required appeal within 30 days, Salzhandler filed intraunion appeals with the Secretary-Treasurer of the Council and the General Secretary-Treasurer of the Brotherhood on April 12 and 28. At the time this action was brought, plaintiff had received no word regarding said appeals.[4]

On May 15, 1961, Salzhandler attempted to attend a

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[4] The parties are agreed that Salzhandler exhausted his intraunion remedies. We do not pass upon the question of whether, in a case such as this, the plaintiff must first exhaust his intraunion remedies.

meeting of the local but was prevented from doing so by Webman. The complaint alleges that Webman assaulted Salzhandler and used violence in removing him.

This action was commenced in the federal court under the Labor Management Reporting and Disclosure Act of 1959, §102, 29 U. S. C. §412, requesting a nullification of the order of the Trial Board, reinstatement in the position as financial secretary, and damages.

Judge Wham dismissed the complaint holding that the Trial Board's conclusion that the leaflet was libelous was sufficiently supported by the evidence. He went further, however, and made an independent finding that the statements were, in fact, libelous. The court held, as a matter of law, that "The rights accorded members of labor unions under Title I of the Labor-Management Reporting and Disclosure Act of 1959 *** do not include the right of a union member to libel or slander officers of the union." We do not agree.

The LMRDA of 1959 was designed to protect the rights of union members to discuss freely and criticize the management of their unions and the conduct of their officers. The legislative history and the extensive hearings which preceded the enactment of the statute abundantly evidence the intention of the Congress to prevent union officials from using their disciplinary powers to silence criticism and punish those who dare to question and complain.[5] The statute is clear and explicit. Under a subchapter heading

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[5] The Senate Select Committee to Investigate Improper Activities in Labor-Management Relations was created to investigate improper activities in the field of labor management relations. S. Res. 74, 85 Cong. 1st Sess., reproduced 103 Cong. Rec. 1264-1265. It filed a number of reports. See S. Rept. 1417, 85th Cong. 2d Sess. (1958); S. Repts. 620, 621, 86th Cong. 1st Sess. (1959); S. Rept. 1139, 86th Cong., 2d Sess. (1960). The legislative history of the "Bill of Rights" portion of the LMRDA is reproduced; 2 Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 at 1102-1119, 1220-1239.

of "Bill of Rights of Members of Labor Organizations," §§ 101(a)(1) and (2), 29 U. S. C. §§ 411(a)(1) and (2), provides:

> "(1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
>
> "(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Section 102, 29 U. S. C. § 412, safeguards the rights just enumerated by providing:

> "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Section 609, 29 U. S. C. § 529 makes doubly secure the protection of the members in the exercise of their rights by providing:

> "It shall be unlawful for any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section."

Appellees argue that just as constitutionally protected speech does not include libelous utterances, *Beauharnais v. Illinois*, 343 U. S. 250, 266 (1952), the speech protected by the statute likewise does not include libel and slander. The analogy to the First Amendment is not convincing. In *Beauharnais*, the Supreme Court recognized the possibility that state action might stifle criticism under the guise of punishing libel. However, because it felt that abuses could be prevented by the exercise of judicial authority, 343 U. S. at 263-64, the court sustained a state criminal libel statute. But the union is not a political unit to whose disinterested tribunals an alleged defamer can look for an impartial review of his "crime."[6] It is an economic action group, the success of which depends in large measure on a unity of purpose and sense of solidarity among its members.

The Trial Board in the instant case consisted of union officials, not judges. It was a group to which the delicate problems of truth or falsehood, privilege, and "fair comment" were not familiar. Its procedure is peculiarly unsuited for drawing the fine line between criticism and defamation, yet, were we to adopt the view of the appellees, each charge of libel would be given a trial de novo in the federal court—an impractical result not likely contemplated by Congress, see 105 Cong. Rec. 6026 (daily ed. April 25, 1959) (colloquy between Senator Goldwater and Senator

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[6] Union discipline for libel has been characterized as a form of criminal sanction, Summers, The Law of Union Discipline: What Courts Do In Fact, 70 Yale L. J. 175, 178 (1960).

Clark)—and such a Trial Board would be the final arbiter of the extent of the union member's protection under §101 (a) (2).[7]

In a proviso to § 101 (a) (2), there are two express exceptions to the broad rule of free expression. One relates to "the responsibility of every member toward the organization as an institution." The other deals with interference with the union's legal and contractual obligations.

While the inclusion of only two exceptions, without more, does not mean that others were intentionally excluded, we believe that the legislative history supports the conclusion that Congress intended only those exceptions which were expressed.[8]

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[7] See Summers, American Legislation for Union Democracy, 25 Mod. L. Rev. 273, 287:

> "The most difficult problem arises when a member is expelled for 'slandering a union officer.' Union debates are characterised by vitriol and calumny, and campaigns for office are salted with overstated accusations. Defining the scope of fair comment in political contests is never easy, and in this context is nearly impossible. To allow the union to decide this issue in the first instance is to invite retaliation and repression and to frustrate one of the principal reasons for protecting this right—to enable members to oust corrupt leadership through the democratic process."

[8] As initially introduced before the Senate, the freedom of speech section was absolute in form. See 105 Cong. Rec. 5810 (daily ed. April 22, 1959). The section was in fact passed in that form. *Id.* at 5827. Later the question came to be reconsidered and the free speech section was amended to include the two express exceptions. *Id.* at 6030 (daily ed. April 25, 1959). In effect, the section as initially passed took away the power of unions to punish for expressions of views. The subsequent amendment restored that power in only two situations.

We are referred to certain statements made during the debate in the Senate which allegedly indicate that "reasonable restraints" on speech were intended. See; *e.g.*, 105 Cong. Rec. 6022 (daily ed. April 25, 1959) (Remarks of Senator Kuchel). We find these statements to be ambiguous and we are not persuaded that exceptions other than those specified were intended.

The expression of views by Salzhandler did not come within either exception in the proviso to § 101 (a) (2). The leaflet did not interfere in any way with the union's legal or contractual obligations and the union has never claimed that it did. Nor could Salzhandler's charges against Webman be construed as a violation of the "responsibility of every member toward the organization as an institution." Quite the contrary; it would seem clearly in the interest of proper and honest management of union affairs to permit members to question the manner in which the union's officials handle the union's funds and how they treat the union's members. It is that interest which motivated the enactment of the statute and which would be immeasurably frustrated were we to interpret it so as to compel each dissatisfied and questioning member to draw, at the peril of union discipline, the thin and tenuous line between what is libelous and what is not. This is especially so when we consider that the Act was designed largely to curtail such vices as the mismanagement of union funds, criticism of which by union members is always likely to be viewed by union officials as defamatory.

The union argues that there is a public interest in promoting the monolithic character of unions in their dealings with employers. But the Congress weighed this factor and decided that the desirability of protecting the democratic process within the unions outweighs any possible weakening of unions in their dealings with employers which may result from the freer expression of opinions within the unions.

The democratic and free expression of opinion in any group necessarily develops disagreements and divergent opinions. Freedom of expression would be stifled if those in power could claim that any charges against them were libelous and then proceed to discipline those responsible on a finding that the charges were false. That is precisely what Webman and the Trial Board did here when they

punished Salzhandler with a five-year ban of silence and stripped him of his office.

So far as union discipline is concerned Salzhandler had a right to speak his mind and spread his opinions regarding the union's officers, regardless of whether his statements were true or false. It was wholly immaterial to Salzhandler's cause of action under the LMRDA whether he spoke truthfully or not, and accordingly Judge Wham's views on whether Salzhandler's statements were true are beside the point. Here Salzhandler's charges against Webman related to the handling of union funds; they concerned the way the union was managed. The Congress has decided that it is in the public interest that unions be democratically governed and toward that end that discussion should be free and untrammeled and the reprisals within the union for the expression of views should be prohibited. It follows that although libelous statements may be made the basis of civil suit, between those concerned, the union may not subject a member to any disciplinary action on a finding by its governing board that such statements are libelous. The district court erred in dismissing the complaint.

Accordingly, we reverse the judgment of the district court and direct entry of judgment for the plaintiff which, among other things, should assess damages and enjoin the defendants from carrying out any punishment imposed by the District Council Trial Board.

UNITED STATES COURT OF APPEALS

For The Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighteenth day of April, one thousand nine hundred and sixty-three.

Present:

Hon. J. Edward Lumbard, *Chief Judge*,
Hon. Charles E. Clark,
Hon. Irving R. Kaufman, *Circuit Judges*.

Solomon Salzhandler,

Plaintiff-Appellant,

v.

Louis Caputo, as President, or Martin Rarback, as Secretary-Treasurer of Dist. Council 9 of New York City, Brotherhood of Painters, and Decorators and Paperhangers of America and Isadore Weidman, individually and as President, or Sam Goldstein, as Treasurer of Local Union 442, Brotherhood of Painters, Decorators and Paperhangers of America,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and that the action be and it hereby is remanded with directions to enter judgment for the plaintiff-appellant in accordance with the opinion of this court.

A. Daniel Fusaro, *Clerk*

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of May, one thousand nine hundred and sixty-three.

Present:

HON. J. EDWARD LUMBARD, *Chief Judge*,

HON. CHARLES E. CLARK,

HON. IRVING R. KAUFMAN, *Circuit Judges*.

SOLOMON SALZHANDLER,

Plaintiff-Appellant,

v.

LOUIS CAPUTO, as President, or MARTIN RARBACK, as Secretary-Treasurer of Dist. Council No. 9 of New York City, Brotherhood of Painters and Decorators and Paperhangers of America and ISADORE WEBMAN, individually and as President, or SAM GOLDSTEIN, as Treasurer of Local Union 442, Brotherhood of Painters, Decorators and Paperhangers of America,

Defendants-Appellees.

A petition for a rehearing having been filed herein by counsel for the appellees,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO, *Clerk*.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOLOMON SALZHANDLER,

Plaintiff,

v.

LOUIS CAPUTO, as President or MARTIN RARBACK, as Secretary-Treasurer of District Council 9 of New York City, Brotherhood of Painters, Decorators and Paperhangers of America; ISADORE WEBMAN, individually and as President or SAM GOLDSTEIN, as Treasurer, of Local Union 422, Brotherhood of Painters, Decorators and Paperhangers of America,

Defendants.

61 Civ. 2110

BURTON H. HALL, ESQ., *Attorney for Plaintiff.*

ASHE & RIFKIN, ESQS., *Attorneys for Defendants;* EUGENE VICTOR, ESQ., *of counsel.*

OPINION FROM THE BENCH

Gentlemen, I want to compliment both of you for the very able and intelligent way in which you have presented this matter in behalf of your respective clients. You have made every effort to present all of the law which is applicable. As a matter of fact, I have lived with this case since the matter came before me before the commencement of the trial. I had you in chambers preliminarily to discuss the case and I kept the file in my briefcase. I have taken it

home with me, and I know what the case is about and I think I know pretty well what the issues are.

I have my mind made up as to what I should do. I think I will give you an opportunity, Mr. Hall, to have a wide-open appeal here, because everything is going to be held against you so that you will have a chance to set aside everything that the court does, if the court is wrong.

I do feel that the trial board was a valid trial board. That was an early question, whether or not the trial board as constituted violated the fundamental rules of the Constitution and the by-laws of the local union. I think it was a valid trial board.

I think the procedure they followed was essentially correct, and I find that the plaintiff in this case had every opportunity to present his side of the controversy.

I find further that any delays that may have occurred were without prejudice to the plaintiff. If anything, it worked to his advantage because he was able to keep his office and draw his salary a little longer than he would have otherwise, but aside from that, and that is more or less beside the point, I do not believe that the union procedure can be held to that fine limitation of time that is insisted upon by the plaintiff in this case. I feel that the delay did not affect the validity of the decision of the trial board.

Now we get around to the Landrum-Griffin Act. I just cannot conceive, in view of the language of the Act, that the Congress intended to go to the extent of permitting indiscriminate libel and slander of officers by member without any opportunity for the union itself to act for its own protection or for the slandered or libeled parties to seek a remedy within the framework of the union constitution and by-laws.

So as to that point I am going to hold against you, Mr. Hall.

Now we get down to the problem of whether or not the leaflet itself was in fact libelous. As has been pointed out, this court is of opinion that the trial board was a valid board pursuant to its duties and function it made certain findings. Whether the statements in the leaflet are libelous is a question of fact largely, and they found as a finding and conclusion of fact that the leaflet which was published here was libelous, and their decision in that respect was affirmed upon appeal.

Assuming that this court has a right to go back of what the trial board found and what the appellate body approved, I think you cannot read that leaflet from beginning to end without the definite impression that in its entire import, and its unavoidable inferences are all intended to be a libelous thing. I think the plaintiff was taking a crack at Webman then plainly ascribed to those irregularities a criminal and larcenous intent.

I think you cannot read the leaflet without coming to that conclusion, even including the words "petty robber" that he uses in connection with the two small dues checks that he refers to in the paragraph towards the end of the leaflet.

As to the validity of the penalty, I am inclined to go along with Mr. Victor on the idea that if a larger penalty is valid, then a smaller penalty is likewise valid in this case. I was of the opinion when we talked about it in chambers that this was a very severe penalty to extend it for five years. I tried to get you gentlemen together on an agreed stipulated settlement of the matter by reducing the penalty from five years to the present time, that is, the time that has already expired. This suggestion which was concurred in by the union, as I understood Mr. Victor's statement, but the plaintiff felt that such disposition would not give him adequate remedy and would not give him justice, and therefore he would not accept the settlement.

I think that the effective operation of the penalty im-

posed was a substantial removal of the plaintiff from the office of financial secretary. The limitations that were imposed upon him there by way of discipline could not be imposed without the effect being to remove him from office, without specifically saying so. There were things that he would be required to do to be a financial secretary, which he could not possibly do under the penalties given by the trial board. Consequently, I think the right to recover here cannot be allowed, that is, the right of recovery of salary that he has lost. The questions before the court are little different from those before Judge Bryan when he passed upon motion for a preliminary injunction except that it appears now that the plaintiff has exhausted his union remedies and is properly in this court. I quite agree with the principles laid down in Judge Bryan's memorandum.

Is there any other point I have not covered?

Mr Hall: Your Honor, I would like to ask you to reconsider. Of course in doing so I would like to raise all other matters that we talked about but in one particular I—perhaps I have not made my argument clear to you—as to the illegality of the penalty as it stands, and let me point this out—

The Court: You have made your argument very clear on that point.

(Further argument by Mr. Hall.)

The Court: As I say, I have lived with this case for several days and I worked out in my own mind that should be its disposition and think I have announced very clearly what my feelings are.

You have lost your case, and that is about all there is to it, so far as you are concerned, Mr. Hall.

I am going to ask Mr. Victor if he will kindly prepare, with a great deal of care, the findings and conclusions which are necessary to comply with the Civil Rules of Pro-

cedure, and also the order denying the plaintiff's right to remedy.

You have a right to submit counter-findings. I have no objection to that if you want to do it, but the ones I am going to follow or adopt are the ones in compliance with the opinion that I have just announced.

Dated New York, May 22, 1962.

Fred L. Wham
U. S. D. J.

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability from my (our) stenographic notes of this proceeding.

Morris I. Kligman
Official Court Reporter
U. S. District Court.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

SOLOMON SALZANDER,

Plaintiff,

—against—

LOUIS CAPUTO, as President, or MARTIN RARBACK, as Secretary-Treasurer of District Council 9 of New York City, Brotherhood of Painters, Decorators and Paperhangers of America; ISADORE WEBMAN, individually and as President or SAM GOLDSTEIN, as Treasurer, of Local Union 422, Brotherhood of Painters, Decorators and Paperhangers of America,

Defendants.

61 Civil 2110

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on for trial on May 21, 1962 and May 22, 1962, and the Court, having heard the evidence and considered the stipulations of the parties and the arguments of counsel, finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. Defendant District Council 9 of New York City (hereinafter referred to as the "District Council") is a labor organization affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America (hereinafter referred to as the "Brotherhood"), and is an unincorporated association composed of affiliated local unions of painters and workers in related crafts.

2. Defendant Local Union 442 is a labor organization

chartered by the Brotherhood in New York City, and is an unincorporated association affiliated with and a constituent part of the District Council.

3. Defendants District Council and Local Union 442 are governed in their internal affairs by the Constitution of the Brotherhood and the By-Laws of the District Council.

4. Plaintiff is a member of Local Union 442 and was the Financial Secretary thereof until his removal from that office by the decision of a Trial Board of the District Council issued on April 4, 1961.

5. The term of office to which plaintiff had been elected in Local Union 442 was from June 30, 1959 until June 30, 1962.

6. In November 1960, plaintiff prepared and circulated a leaflet to the membership of Local Union 442 and to other persons in the District Council which set forth certain statements critical of defendant Isadore Webman, the President of Local Union 442, alleging, among other things, that the said Isadore Webman was a "petty robber" and ascribing to him union irregularities of a criminal and larcenous nature.

7. On or about December 13, 1960, defendant Webman filed intra-union charges with the District Council against plaintiff, alleging that statements in plaintiff's leaflet were libelous and otherwise violative of Section 267 of the Brotherhood Constitution.

8. A Trial Board of five (5) persons was duly constituted to hear the said charges, pursuant to Sections 269 and 220 (e) of the Brotherhood Constitution and Article XIII, Section 9, of the District Council By-Laws.

9. The composition of the said Trial Board did not violate Section 269 (b) of the Brotherhood Constitution by reason of bias or interest on the part of any of its members merely because some of them may have been in sympathy with an

intra-union political group which opposed the political group with which plaintiff sympathized.

10. Plaintiff received adequate notice of the charges preferred against him and sufficient time to prepare his defense.

11. The hearing conducted by the Trial Board accorded plaintiff full opportunity to present his side of the controversy, and the procedures followed were correct and accorded plaintiff all the rights to which he was entitled under the Brotherhood Constitution, under the District Council By-Laws, and under applicable provisions of law.

12. The Trial Board had the duty and authority to make findings of fact on the basis of the evidence adduced before it, and such evidence was sufficient to warrant its finding that plaintiff had libeled defendant Webman.

13. The decision of the Trial Board, which imposed a penalty on plaintiff prohibiting him from participating in the affairs of Local Union 442, or of any other local union of the Brotherhood, or of the District Council for a period of five (5) years, was a valid decision and was not violative of the Brotherhood Constitution, the District Council By-Laws, or of Federal law.

14. The effect of the decision of the Trial Board was to remove plaintiff from his office as Financial Secretary of Local 442, and plaintiff was not entitled to receive the salary for that office after such removal.

15. Plaintiff was not disciplined by defendants for exercising rights accorded him under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C., Sec. 411 et seq.).

CONCLUSIONS OF LAW

1. It is not within the province of this Court to substitute its judgment for that of the Trial Board where plaintiff has

been given adequate notice of, and an opportunity to defend, the intra-union charges preferred against him, and there is some evidence to sustain the judgment of the Trial Board.

2. The rights accorded members of labor unions under Title I of the Labor-Management Reporting and Disclosure Act of 1959 (29 U. S. C., Sec. 411 et seq.) do not include the right of a union member to libel or slander officers of the union.

3. The complaint must be dismissed.

IT IS SO ORDERED, and counsel for defendants will submit appropriate judgment in accordance herewith.

Dated: New York, N. Y.
May 25, 1962.

Fred L. Wham
U. S. D. J.